

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FILED

WARREN DURHAM JR.

Plaintiff

V.

CITY OF ERIE, ET AL.

Defendants.

C.A. No. 04-297 ERIE

District Judge McLaughlin

Magistrate Judge Baxter

PLAINTIFF'S PRETRIAL MEMORANDUM

Plaintiff, Warren Durham Jr., hereby submit his Pretrial Memorandum pursuant to Western District Court's local Rules.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. Sections 1331 and 1334.

CAUSE OF THE ACTION

Plaintiff commenced this action against Defendants pursuant to 42 U.S.C. Section 1983. This action resulted from the denial of constitutional rights to a fair trial; failure to train or supervise police officers; selecting a bias jury; and introduction of false evidence.

STATEMENT OF THE FACTS

On the morning of January 23, 1996, Erie police knocked on the door of Plaintiff's home and were promptly admitted in by Plaintiff. The officers inquired as to the owner of the Oldsmobile parked in front of Plaintiff's house. Upon responding that the car was his, Plaintiff was arrested.

Approximately six-days after Plaintiff's arrest, while he was in the Erie County Prison, Defendants Washburn and Durkin gained forcible entry into his home without a valid search and seizure warrant. Donald Durham nor Henry Johnson were home. The Defendants testified falsely that while searching upstairs they found a gun allegedly used by Plaintiff in criminal activity. The

gun was exhibited to the jury, denying Plaintiff his constitutional right to a fair trial. The City of Erie has failed to train, discipline or control its police officers.

On July 9, 1996, the Plaintiff's criminal trial commenced before Defendant Anthony and jury. The Plaintiff had been ordered to trial pro se.

Based on the trial transcripts, several prospective jurors responded clear and convincing that they would be bias and had fixed opinions as to Plaintiff's guilt or innocence. Nevertheless, they sat as jurors in Plaintiff's criminal trial.

During the trial proceedings, Defendant Tackett testified falsely that the DNA evidence presented to the trial court and jury was a match. However, his testimony was a deliberate and reckless falsification and omission of the DNA evidence as contained in the report from the Greensburg State Police Laboratory, which violated Plaintiff's right to a fair trial. Defendant Anthony allowed the DNA evidence and testimony, despite the same being false.

The jury returned a guilty verdict on all charges. Subsequently, the Plaintiff was sentenced to 13 1/2 to 30-years imprisonment. On May 27, 2004 the Third Circuit reversed Plaintiff's criminal conviction. On September 21, 2004, the Plaintiff was retried, subsequently on September 22, 2004, found not guilty by jury of all charges.

DAMAGES

The Plaintiff seeks compensatory damages in excess of \$5,000,000. And punitive damages of \$10,000,000. , plus the cost of this action, prevailing party fees and such other relief as this Court deems just, proper, and equitable.

PROPOSED WITNESSES

The Plaintiff may subpoena the following witnesses:

Theodore Kemp
Kathryn Brigham
Joyce Moser

Scott F. Ermlick
Laboratory Manager
Greensburg Regional Laboratory
Pennsylvania State Police

Christopher McElynn
Assistant District Attorney
Erie County, Pa.

Any and/or all of Defendant's witnesses.

The Plaintiff reserve the right to amend this list at or prior to trial.

Respectfully submitted,


WARREN DURHAM JR.

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WARREN DURHAM JR.,)	C.A. No. 04-297 ERIE
Plaintiff)	
V.)	District Judge McLaughlin
)	Magistrate Judge Baxter
CITY OF ERIE, ET AL.)	
Defendants.)	


CERTIFICATE OF SERVICE

I, Warren Durham Jr., hereby certify that I am this day serving a true and correct copy of the foregoing "Plaintiff's Pretrial Memorandum" upon the person named below by FIRST CLASS MAIL, postage prepaid, to:

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DATED: 5/24/06